

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

SEQUA CORPORATION;
AND JOHN H. THOMPSON,)

Defendants.)

Civil Action No. _____

COMPLAINT

The United States of America ("United States"), by authority of the Attorney General and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil action under Sections 106(a), 107 and 113(b) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. §§ 9606(a), 9607 and 9613(b). This is an action against Defendants related to the Dublin Trichloroethylene ("TCE") Site ("Site"), located in Bucks County, Commonwealth of Pennsylvania ("Pennsylvania"). The United States seeks (a) performance of response activities at the Site based upon the remedial action set forth in the Record of Decision ("ROD"), dated September 9, 2002, as amended by an Explanation of Significant Differences ("ESD"), dated August 3, 2004 and (b) recovery of response costs incurred and to be incurred by the United States in response to the release or threat of release of hazardous substances in connection with the Site. The United States also seeks a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), on liability that will be binding in future actions to recover further costs incurred at or in connection with the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1345 and 42 U.S.C. §§ 9606(a), 9607, and 9613(b).

3. Venue is proper in this judicial district pursuant 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. § 9613(b), because the Site is located in this judicial district and the claims arose in this district.

DEFENDANTS

4. Defendant Sequa Corporation ("Sequa") is a Delaware corporation and, at times relevant hereto, conducted business in Pennsylvania and in this judicial district. In 1971, the Kollsman Motor Company ("KMC"), which owned and operated at the facility at or near 120 Mill Street, Dublin Borough, deeded the Site property or a portion thereof to the Kollsman Instrument Corporation ("KIC"), and thereafter KMC dissolved. In 1972, the Sun Chemical Company ("Sun Chemical") merged with KIC. Sun Chemical was the surviving corporation as a result of this merger. In or about 1987, Sun Chemical changed its name to the Sequa Corporation. Sequa is the successor in interest to KMC and KIC.

5. Defendant John H. Thompson ("Thompson") is a resident of Pennsylvania. Defendant Thompson is the current owner of the Site or a portion thereof, which includes the facility located at or near 120 Mill Street.

6. Defendants Sequa and Thompson each falls within the definition of a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

GENERAL ALLEGATIONS

A. The Site

7. The Site consists of approximately four and one-half acres, located at or near 120 Mill Street in the Borough of Dublin, Bucks County, Pennsylvania.

8. In or about 1959, KMC acquired the Site and operated a business there until approximately 1971. KMC's business activity at the Site included, inter alia, manufacturing

miniature precision motors, gear trains, brakes and related electro-mechanical components.

9. In or about August 1973, Sun Chemical, as the successor to KIC, transferred title to the Site property to the Bucks County Industrial Development Authority ("BCIDA").

10. In or about 1973, Athlone Industries Incorporated, now known as the All Acquisition Corporation ("Athlone"), purchased the Site property from the BCIDA. Between approximately 1973 and 1986, Athlone conducted a business at the Site, which included at least the cleaning, stamping, packaging and storing of baseballs and softballs.

11. In or about 1986, Defendant Thompson acquired the Site.

12. During the period KMC owned and operated the Site, TCE was used as a part of the manufacturing operations conducted by KMC, including, but not necessarily limited to, the use of TCE in degreasing machine parts and/or cooling machine parts that heated when metals were being cut. During the period KMC operated at the Site, TCE was disposed of at the Site, including, but not necessarily limited to TCE being dumped, poured or spilled onto the ground at the Site.

13. As a result of KMC's operations at the Site, including the manner in which TCE was disposed of at the Site, TCE was released into the environment, including into groundwater in the vicinity of the Site.

14. In approximately 1986, the Bucks County Health Department ("BCHD") conducted a survey of drinking water supplied to homes and businesses in the Dublin Borough. The survey revealed, inter alia, levels of TCE up to 1000 parts per billion ("ppb") in tap water samples taken from homes and businesses. To address TCE in drinking water, the BCHD took certain steps to protect citizens, including at least issuing advisories to Dublin citizens to curtail water usage and recommended the installation of carbon filters in homes with TCE levels above 5 ppb (EPA's Maximum Contaminant Level ("MCL") allowed in drinking water).

B. Response Actions In Connection with The Site

15. In September 1986, EPA was requested by the BCHD to evaluate the Site, including groundwater in the vicinity of the Site. Subsequently, EPA conducted a preliminary assessment and determined that residential and commercial wells near the Site were contaminated with TCE.

16. Between 1987 and 1990, investigations of the Site and the monitoring of residential wells near the Site and monitoring wells installed at the Site confirmed the presence of Volatile Organic Compounds ("VOCs"), including TCE, in groundwater in the vicinity of the Site.

17. In August 1990, EPA placed the Dublin TCE Site on the National Priorities List.

18. On December 30, 1991, EPA issued a ROD for operable unit one ("OU-1"). Between 1991 and the late 1990s, EPA conducted response activities in implementing OU-1, which involved provision of an alternative supply of clean drinking water to residences and businesses affected and potentially affected by contaminated groundwater at or near the Site. These activities were implemented in a phased-approach. In July 2002, EPA issued an Explanation of Significant Differences related to OU-1.

19. On or about August 15, 1991, Defendants, pursuant to an administrative order issued to them by EPA, commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site. The RI was completed on December 4, 1998. A Baseline Risk Assessment was completed on July 8, 1999, and a Feasibility Study was completed on March 14, 2001.

20. On September 9, 2002, EPA issued a second ROD, which selected a remedy to address contaminated groundwater at the Site.

21. On August 3, 2004, EPA published an Explanation of Significant Differences or ESD, pursuant to Section 117(c) of CERCLA, 42 U.S.C. § 9617(c), explaining the

differences which significantly changed, but did not fundamentally alter the remedy selected in the September 9, 2002, ROD.

22. EPA, the Agency for Toxic Substances and Disease Registry, and the Department of Justice have undertaken response activities in connection with the Site, including, but not limited to, assessments, monitoring, planning, and enforcement related activities.

23. The United States has incurred response costs of at least \$265,509.95 in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, during the period covered by this Complaint, costs subsequent to September 30, 1999. The United States' response costs were incurred in a manner not inconsistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

24. The United States realleges and incorporates by reference paragraphs 1 through 23, above, as if fully set forth below.

25. The September 9, 2002, ROD, as changed by the August 3, 2004, ESD, selected a remedy for the Site to address contaminated groundwater at the Site. The ROD also requires, inter alia, implementation of institutional controls in order to protect the implemented remedy.

26. Based upon one or more assessments, sampling events and/ or studies, EPA determined that an actual or threatened release of hazardous substances from the Site, if not addressed by implementing the remedy selected in the ROD, may present an imminent and substantial endangerment to the public health, welfare, or the environment.

27. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), as amended, provides in pertinent part:

. . . when the President [as duly delegated to EPA] determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court . . . shall have jurisdiction to grant such relief as the public and the equities of the case may require.

28. Defendants Sequa and Thompson are liable parties under CERCLA, and the United States is entitled to an order, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), requiring Defendants to implement the remedy selected by EPA in the September 9, 2002, ROD, as changed by the August 3, 2004, ESD, for the Site.

SECOND CLAIM FOR RELIEF

29. The United States realleges and incorporates by reference paragraphs 1 through 28, above, as if fully set forth below.

30. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as amended, provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

(1) the owner and operator of a vessel or facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, . . . , shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan;

31. TCE is a hazardous substance within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

32. TCE found in groundwater at or near the Site was released or threatened to be released into the environment within the meaning of Section 101(22) of

CERCLA, 42 U.S.C. § 9601(22).

33. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

34. To protect the public health, welfare and the environment from the actual or threatened release of a hazardous substance into the environment from the Site, the Administrator of EPA, pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), has undertaken response activities with respect to the Site that are not inconsistent with the NCP, including investigations, monitoring, assessing, testing, and enforcement related activities.

35. Defendant Thompson is liable under Section 107(a) (1) of CERCLA, 42 U.S.C. § 9607(a) (1), as an owner or operator of the Site.

36. Defendant Sequa, as the successor in interest to the Kollsman Instrument Corporation, the successor in interest to the Kollsman Motor Company, is liable under Section 107(a) (2) of CERCLA, 42 U.S.C. § 9607(a) (2), as an owner or operator of the Site at the time hazardous substances were disposed of at the Site.

37. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), Defendants are jointly and severally liable for all response costs incurred and to be incurred by the United States with respect to the Site.

PRAYER FOR RELIEF

WHEREFORE, the United States requests that the Court enter a judgment against Defendants, jointly and severally, as follows :

A. Enter a judgment against Defendants, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), requiring Defendants to implement the remedy selected by EPA in the September 9, 2002, ROD, as changed by the August 3, 2004, ESD;

B. Enter a judgment against Defendants, pursuant to Section 107(a) of

CERCLA, 42 U.S.C. § 9607, finding Defendants liable for the United States' response costs incurred in connection with the Site subsequent to September 30, 1999, and Order Defendants to pay such costs;

C. Enter a declaratory judgment as to Defendants' liability that will be binding in future actions to recover further response costs incurred by the United States in connection with the Site; and

D. Award the costs of this action to the United States and Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

THOMAS L. SANSONETTTI
Assistant Attorney General
Environment and Natural Resources
Division
Department of Justice

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice

NATHANIEL DOUGLAS
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
7611 Ben Franklin Station
Washington, D.C. 20044

PATRICK. L. MEEHAN
United States Attorney
Eastern District of Pennsylvania

Assistant United States Attorney
Eastern District of Pennsylvania
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106

OF COUNSEL:

JEFFERIE E. GARCIA
Assistant Regional Counsel
Office of Regional Counsel
EPA Region III
1650 Arch Street
Philadelphia, PA 19103